

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: *Ex Parte* Application of Tracey Amon

USDC SDNY
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ELECTRONICALLY FILED
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DATE FILED: 1/26/2023

1:22-cv-10248 (JGK) (SDA)

ORDER AUTHORIZING DISCOVERY

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, Petitioner Tracey Amon (“Petitioner”) filed an *Ex Parte* Application for Order to Obtain Discovery Pursuant to 28 U.S.C § 1782 (“Application”), dated December 2, 2022 (ECF No. 1); and

WHEREAS, on January 19, 2023, the matter was referred to the undersigned (ECF No. 6); and

WHEREAS, the Application is supported by the Declarations of Kevin Murphy (ECF No. 1) and Fanette Sardet (ECF No. 4), together with related exhibits, and an accompanying Memorandum of Law (ECF No. 3); and

WHEREAS, the Court has considered the Application, Declarations, exhibits, arguments and law presented in connection therewith; and

WHEREAS, the Court finds that (1) the statutory requirements of 28 U.S.C. § 1782 are satisfied because (a) the person from whom discovery is sought, American Express Company, resides or is found in this District, in New York, New York; (b) the discovery is for use in multiple foreign proceedings before a foreign tribunal pending in Switzerland; and (c) the application for discovery is made by an interested person, Tracey Amon, *see Federal Republic of Nigeria v. VR Advisory Services, Ltd.*, 27 F.4th 136, 148 (2d Cir. 2022) (identifying threshold requirements for

issuance of a § 1782 subpoena); (2) the factors identified by the Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), weigh in favor of granting the Application; and (3) sufficient basis has been shown for granting the Application; and

WHEREAS, the granting of the Application *ex parte* is recognized in this Circuit. See *Gushlak v. Gushlak*, 486 F. App'x 215, 217 (2d Cir. 2012) ("it is neither uncommon nor improper for district courts to grant applications made pursuant to § 1782 *ex parte*"); and


WHEREAS, the Court held a telephone conference on January 26, 2023, and was advised that the parties to the foreign proceedings did not intend to appear in this action;

It is hereby ORDERED that:

1. Petitioner's Application is GRANTED;
2. Petitioner is authorized to serve the subpoena and its attachment annexed as Exhibits 5 and 6 to the Application (ECF Nos. 1-5 and 1-6);
3. Kevin Murphy, and any other attorney affiliated with Wuersh & Gering LLP and admitted to practice in the Southern District of New York, is hereby appointed to issue, sign and serve the subpoena upon Respondent American Express Company ("Respondent");
4. Respondent is directed to respond to such subpoena pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court. Respondent may assert any objection it deems appropriate; and
5. This Court shall retain such jurisdiction as is necessary to effectuate the terms of the subpoena.

SO ORDERED.

DATED: New York, New York
January 26, 2023

A handwritten signature in black ink, reading "Stewart D. Aaron", written over a horizontal line.

STEWART D. AARON
United States Magistrate Judge